

SUBCHAPTER D—GARNISHMENT OF BENEFITS

PART 350—GARNISHMENT OF BENEFITS PAID UNDER THE RAILROAD RETIREMENT ACT, THE RAILROAD UNEMPLOYMENT INSURANCE ACT, AND UNDER ANY OTHER ACT ADMINISTERED BY THE BOARD

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AUTHORITY: 15 U.S.C. 1673(b)(2); 42 U.S.C. 659; and 45 U.S.C. 231f(b)(5), 231m, 352(e), and 362(l).

§ 350.1 Authorization for garnishment of benefits paid by the Board.

(a) Annuities and accrued annuities payable under the Railroad Retirement Act, sickness and unemployment benefits payable under the Railroad Unemployment Insurance Act, and benefits payable under any other Act administered by the Board, are subject, in like manner and to the same extent as if the Board were a private person, to legal process brought for the enforcement of legal obligations to provide child support or to make alimony payments.

(b) Lump sums, other than accrued annuities, which are payable under the Railroad Retirement Act of 1974, such as those payable under sections 6(b)(1) and 6(c)(1) of that Act, are not subject to legal process as defined in this subchapter. However, an individual entitled to a benefit under section 6 of the Railroad Retirement Act of 1974 may assign the right to receive all or any part of that benefit.

(c) Except as authorized under paragraphs (a) and (b) of this section and part 295 of this chapter, no benefit paid by the Board shall be assignable or be subject to garnishment, attachment, or other legal process, nor shall the payment thereof be anticipated.

(d) In the absence of law to the contrary, it will be assumed that “wages,”

“earnings,” and analogous terms referred to in relevant provisions of state law include payments made by a private person which are analogous to those paid by the Board.

[45 FR 28314, Apr. 29, 1980, as amended at 50 FR 12242, Mar. 28, 1985; 53 FR 35807, Sept. 15, 1988]

§ 350.2 Definitions.

(a) *Child support* means periodic payments of funds for the support and maintenance of a child or children; such term also includes attorney’s fees, interest, and court costs, when and to the same extent that they are expressly made recoverable pursuant to a decree, order, or judgment issued in accordance with applicable state law by a court of competent jurisdiction.

(b) *Alimony* means periodic payments of funds for the support and maintenance of a spouse or former spouse and, subject to and in accord with state law, includes but is not limited to, separate maintenance, alimony pendente lite, maintenance, and spousal support; such term also includes attorney’s fees, interest, and court costs, when and to the extent that they are expressly made recoverable pursuant to a decree, order, or judgment issued in accord with applicable State law by a court of competent jurisdiction. Alimony does not include any payment or transfer of property or of its value in compliance with any community property settlement, equitable distribution of property, or other division of property, nor does it include any payment to an estate.

(c) *Legal process* means any court order, summons, or other similar process, including administrative orders, in the nature of garnishment, which is directed to and the purpose of which is to compel the Board to make a payment from moneys which are otherwise payable to an individual, to another party in order to satisfy a legal obligation of such individual to provide child support or make alimony payments. For purposes of this subchapter, legal process additionally includes assignments in lieu of garnishment, but only where

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grounds for the issuance of legal process in the nature of garnishment exist. Such assignments are revocable.

(d) *Legal obligation* means an obligation to pay alimony or child support which is enforceable under appropriate state law.

[45FR 28314, Apr. 29, 1980, as amended at 53 FR 35807, Sept. 15, 1988]

§ 350.3 Procedure.

(a) Service of legal process brought for the enforcement of an individual's obligation to provide child support or make alimony payments shall be accomplished by certified or registered mail, return receipt requested, directed to the Deputy General Counsel of the Board, 844 Rush Street, Chicago, Illinois 60611, or by personal service upon the Deputy General Counsel.

(b) Where the Deputy General Counsel is effectively served with legal process relating to an individual's legal obligation to provide child support or to make alimony payments, he shall, as soon as possible and not later than 15 days after the date of effective service of such process, send written notice that such process has been so served, together with a copy thereof, to the individual whose moneys are affected thereby; and, if response to such process is required, shall respond within 30 days, or within such longer period as may be prescribed by state law, after the date effective service is made. These requirements do not apply in the case of an assignment in lieu of garnishment or an assignment of a portion, attributable to the existence of the annuitant's family members, of a railroad retirement annuity computed under the social security minimum guaranty provision of the Railroad Retirement Act.

(c) Included with the legal process issued to the Board should be the name of the individual against whom the legal obligation to provide child support or to make alimony payments is sought to be enforced and, if available, the individual's social security or railroad retirement number, the individual's address, and the type of benefit that the individual is receiving from the Board.

(d) Legal process which refers to a payment in terms of a percentage of

some other amount must also refer to that payment in terms of a specific amount or amounts. In connection with any legal process which does not refer to a payment in terms of a specific amount or amounts, the Board may compute the amount or may comply with that portion of the legal process which specifies an amount or amounts and withhold compliance with the balance of the process pending clarification from the issuing court or from the party which procured that process.

[45 FR 28314, Apr. 29, 1980, as amended at 48 FR 51448, Nov. 9, 1983]

§ 350.4 Exemptions.

(a) Unless a lower percentage or dollar amount limitation on garnishment is provided by applicable state or local law, the portion of any payment due to an individual which is subject to legal process to enforce any order for the support of any person shall not exceed 65 percent. Where the individual is supporting a spouse or dependent child, other than a spouse or child with respect to whose support that legal process is issued, the portion subject to legal process is reduced by 10 percent. Where the alimony or support arrearage is less than 12 weeks old, the portion subject to legal process is reduced by 5 percent. If a lower limitation is provided by applicable state or local law, then that lower limitation shall be applied.

(b) In the absence of some evidence to the contrary, it will be assumed that the defendant is not supporting a spouse or dependent child other than a spouse or child with respect to whose support the legal process is issued.

(c) In any case in which a recurring benefit payment is reduced, whether due to a recovery by the Board of an overpayment or for some other reason, below the rate at which it is ordinarily paid, any applicable exemptions shall be applied to the amount of the reduced benefit which is actually paid.

(d) For purposes of the applicability of exemptions, amounts deducted for medicare premiums must first be subtracted from the annuity amount.

[45 FR 28314, Apr. 29, 1980]